vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO.9296 OF 2003

1. Union of India
through the Secretary
Ministry of Finance, Govt. of India
Department of Finance
North Block, New Delhi

2. Additional Collector of Customs
Vigilance Section, New Customs
House, II floor, Ballard Estate
Mumbai-38

3. Commissioner of Customs (I)
New Customs House, II floor
Ballard Estate, Mumbai-38

4. Shri Rajinder Kumar
Enquiry Officer
Assistant Commissioner of Customs
Appraising Group II, New Customs
House, II floor, Ballard Estate,
Mumbai ... Petitioners

V/s.

Raju R. Shetty
employed as Preventive Officer
Customs Department, Office of
the Assistant Commissioner of
Customer
(Personnel & Administration Deptt.)
Nhava Sheva, JNPT,
Uran ... Respondent

Mr.D.A. Dubey i/b T.C. Kaushik for Petitioners

Mr.Sai Kumar Ramamurthi with Ramesh Ramamurthi for Respondent

CORAM: **V.G. PALSHIKAR, Ag.C.J &**
SMT.NISHITA MHATRE, J.

DATED: **FEBRUARY 22, 2006**

ORAL JUDGMENT (PER PALSHIKAR, Ag.C.J.):

. By this Petition, the Petitioner Union of India has challenged the order passed by the Central Administrative Tribunal on Original Application No.267 of 1996.

2. The present respondent was tried in a criminal Court for commission of certain crime and for that incident he was also departmentally proceeded with. The departmental proceedings were pending since 1988 and were so pending for 13 years when the Tribunal decided the matter. That was therefore one reason why the Tribunal set aside the departmental enquiry and findings. Another reason given by the Tribunal was that the criminal Court was considering the criminal case against the original applicant, who will have to face the consequences of the decision that may be rendered eventually.

3. These two reasons are assailed on behalf of the Union of India by the learned Counsel saying that the delay of 13 years was caused because of the delinquent himself as he kept on making repeated representations for postponement of departmental enquiry. He cannot

take advantage of his wrong or cannot reap the benefits of his own representations which resulted in protracting the proceedings. We are unable to accept the submission for the simple reason that after the first representation was made it should have been decided and further representations need not be entertained. The delay also lies with the departmental authority for entertaining representations after representations. In such circumstances, we see no reason why the findings of the Tribunal that the proceedings were delayed by some time be not accepted.

4. Similarly, the Petitioner has ceased to be in service having retired six to eight years ago. He is still facing the prosecution. He will have to suffer consequences thereof. Taking into consideration his retirement eight years ago and the reasons given by the Tribunal in paragraph 17, in our opinion, no interference is called for. Petition dismissed.

5. It is obvious that the rejection of this Petition will not affect the prosecution in any manner.